

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EMILIANO CHAVEZ-GONZALEZ,

Petitioner,

v.

ALBERTO GONZALES, *et al.*,

Respondents.

CASE NO. C05-306-JLR-MJB

REPORT AND
RECOMMENDATION

INTRODUCTION AND BACKGROUND

On February 23, 2005, petitioner filed, through counsel, a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his final order of removal to Mexico. (Dkt. #1). At the same time, petitioner also filed a Motion for Preliminary Injunctive Staying Removal. (Dkt. #3). The Court subsequently stayed petitioner's removal pending the resolution of his habeas petition. (Dkt. #9). Petitioner's petition raised both statutory and constitutional challenges to the agency's determination that he is removable under INA § 212(a)(2)(C), 8 U.S.C. § 1182(a)(2)(C). However, on May 24, 2005, petitioner filed a Motion to Transfer Petition to the Court of Appeals. (Dkt. #16). The basis of petitioner's motion is that such transfer is required by Section 106(c) of the REAL ID Act of 2005, Pub. L. No. 109-13, 119

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1 Stat. 231, enacted into law on May 11, 2005. Respondents have stated that they have no
2 opposition to petitioner's motion to transfer this case to the Ninth Circuit Court of Appeals
3 pursuant to the REAL ID Act. (Dkt. #17).

4 In light of the recent enactment of the REAL ID Act of 2005, I recommend that the
5 Court transfer this action to the United States Court of Appeals for the Ninth Circuit as a
6 Petition For Review.

7 TRANSFER OF JURISDICTION

8 On May 11, 2005, the President signed into law the REAL ID Act of 2005. REAL ID
9 Act, Pub. L. No. 109-13, 119 Stat. 231. Under Section 106(a)(1)(B) of the REAL ID Act, two
10 new paragraphs (4 and 5) were added to 8 U.S.C. § 1252(a). Paragraph 5 of 8 U.S.C. §
11 1252(a) has particular relevance to this case; it provides:

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13 (5) EXCLUSIVE MEANS OF REVIEW.--Notwithstanding any other provision
14 of law (statutory or nonstatutory), including section 2241 of title 28, United
15 States Code, or any other habeas corpus provision, and sections 1361 and 1651
16 of such title, a petition for review filed with an appropriate court of appeals in
17 accordance with this section shall be the sole and exclusive means for judicial
18 review of an order of removal entered or issued under any provision of this Act,
19 except as provided in subsection (e). For purposes of this Act, in every provision
20 that limits or eliminates judicial review or jurisdiction to review, the terms
21 'judicial review' and 'jurisdiction to review' include habeas corpus review
22 pursuant to section 2241 of title 28, United States Code, or any other habeas
23 corpus provision, sections 1361 and 1651 of such title, and review pursuant to
24 any other provision of law (statutory or nonstatutory).

25 Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005) (Division B, Section 106(a)(B)). This
26 provision explicitly deprives this Court of jurisdiction under 28 U.S.C. § 2241 to review an
order of removal entered under the Immigration and Nationality Act. Moreover, Section 106(b)
of the REAL ID Act explicitly provides that Section 106(a) is retroactive: "subsection (a) shall
take effect upon the date of enactment of this division and shall apply to cases in which the final

1 administrative order of removal, deportation, or exclusion was issued before, on, or after the
2 date of enactment.” Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005) (Division B, Section
3 106(a)(B)).

4 Additionally, Section 106(c) of the REAL ID Act provides that if any § 2241 habeas
5 corpus case challenging a final administrative order of removal, deportation, or exclusion is
6 pending in a district court on the date of enactment, “then the district court shall transfer the
7 case (or any part of the case that challenges the order of removal ...) to the [appropriate] court
8 of appeals.” Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005) (Division B, Section 106(c)).
9 Accordingly, this action should be transferred to the Ninth Circuit Court of Appeals for
10 resolution as a Petition for Review in accordance with Section 106(c) of the REAL ID Act.
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12 CONCLUSION

13 For the foregoing reasons, I recommend that this case be transferred to the Ninth Circuit
14 as a Petition For Review pursuant to Section 106(c) of the REAL ID Act. A proposed Order
15 accompanies this Report and Recommendation.

16 DATED this 9th day of June, 2005.

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18 MONICA J. BENTON
19 United States Magistrate Judge
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